IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 485 OF 2006
WITH
CIVIL APPLICATION NO. 602 OF 2006

National Federation of General
Insurance Employees. .. Appellant.
vs.
Shri R.V. Shetty & ors. .. Respondents.

Ms. Madhavi Tavanandi for the appellant.

Shri A.D. Shetty with Ms. Rita Joshi i/b M.D. Nagle for respondent No.1

Shri Sharan Jagtiani a/w Mahesh Shukla i/b Desai and Diwanji for respondent No.2.

CORAM : A.M. KHANWILKAR, J.

DATED : 8.8.2006.

P.C. :

. Heard Counsel for the parties. Perused relevant documents on record.

2. Admit. Shri Shetty waives service for respondent No.1. Shri Sharan Jagtiani waives service for respondent No.2.

3. As short question is involved in this appeal, by consent, the appeal is taken up for hearing forthwith.

4. This appeal takes exception to the judgment and order passed by the City Civil Court, Bombay, dated 29th May 2006/5th June 2006 in Notice of Motion Nos. 1168/2006 and 1169/2006. By the said

notices of motion, the appellant sought interim relief during the pendency of the suit. For the purpose of considering this appeal, it is not necessary to advert to the factual matrix of the case in extenso. Suffice it to observe that the appellant filed a suit for declaration and injunction against the respondent being Short Cause Suit No. 1138/2006. During the pendency of the said suit, two notices of motion were taken out by the appellant being N.M. No.1168/2006 and 1169/2006, for interim reliefs during the pendency of the suit. The reliefs claimed in the said notices of motion are reproduced in the opening part of the impugned judgment and order.

5. After going through the judgment under appeal, I am in agreement with the grievance made by the Counsel for the appellant that the trial Court has not addressed itself on the merits of the contentions for the purpose of considering interim relief, but proceeded to record that this aspect can be considered at the hearing of the suit after evidence is recorded. This is not a correct approach. The trial Court was obliged to consider relevant aspects of the matter so as to record clear finding on the issue whether prima facie has been made out by the plaintiff and also on the balance of convenience and irreparable loss. This is not what has been done by the trial Court.

6. In the above circumstances, judgment under appeal will have to be set aside and parties relegated before the trial Court for consideration consideration of the reliefs prayed in notices of motion on merits in accordance with law, uninfluenced by the observations made in the impugned order.

7. While relegating the parties before the trial Court, it is made clear that if the fact recorded by the trial Court that Check Off Exercise of 2000 is already completed, then the appellant will not be entitled to relief in terms of prayer clause (a) of Notice of Motion No. 1169/2006, as that relief is worked out. The trial Court may record necessary finding in that behalf on the basis of the documents and pleadings on record. All contentions are kept open.

8. During the course of hearing, Counsel for respondent No.1 contended that in fact, suit instituted by the appellant itself is not maintainable for want of jurisdiction of the civil Court. Even this aspect will have to be considered by the trial Court, as may be advised as per law. All questions in that behalf are kept open.

9. Accordingly, the impugned judgment and order

is set aside and parties are relegated before the trial Court by restoring the notices of motion to the file of the trial Court. Ad-interim arrangement directed by the trial Court in terms of the order dated 24th March 2006 shall continue till trial Court proceeds to modify the same if the situation so warrants. Both the notices of motion shall appear before the trial Court on 22nd August 2006 at 2.30 p.m. on which day, the trial Court will issue appropriate direction to the parties and fix notices of motion for hearing, as per its convenience to ensure that the same are finally disposed of on or before 30th September 2006.

. Appeal as well as Civil Application disposed of in the above terms.

(A.M. KHANWILKAR,J.)